

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARK HUCKABA,

Petitioner,

vs.

MAGGIE MILLER STOUT,

Respondent.

NO. CV-05-334-MWL

ORDER DENYING MOTION TO STAY AND
DISMISSING ACTION WITHOUT
PREJUDICE

On June 12, 2006, Magistrate Judge Leavitt recommended dismissal of Mr. Huckaba's First Amended Petition as it was clear from the face of the petition that Mr. Huckaba had failed to exhaust each of his four habeas claims in the state's highest court. Rather than file objections, Mr. Huckaba submitted a letter on June 16, 2006, which the court has liberally construed as a Motion to Stay (Ct. Rec. 13). Mr. Huckaba indicates he is currently serving a three year term of probation at his residence in Colbert, Washington.

The district court can only utilize "stay and abeyance" procedures in those cases where the petition contains both exhausted and unexhausted claims. See *Pliler v. Ford*, 542 U.S. 225, 230 (2004). Mr. Huckaba's petition contains only unexhausted claims. Accordingly, there is no basis on which to stay the present proceedings.

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1 Therefore, **IT IS ORDERED** the Motion to Stay (Ct. Rec. 13) is **DENIED**.

2 For the reasons set forth above and in the Report and
3 Recommendation, **IT IS ORDERED** the Report and Recommendation is **ADOPTED**
4 **in its entirety** and this action is **DISMISSED without prejudice** to
5 Petitioner filing a new action once Petitioner has exhausted state
6 court proceedings.

7 Petitioner should be mindful of the limitations period set forth
8 in 28 U.S.C. § 2244(d). Also, this one-year limitations period is not
9 statutorily tolled during the pendency of a federal habeas petition.
10 *See Duncan v. Walker*, 533 U.S. 167 (2001).

11 **IT IS SO ORDERED.** The District Court Executive is directed to
12 enter this Order, enter judgment, forward a copy to Petitioner and
13 close the file.

14 **DATED** this 17th day of July 2006.

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16 *s/ Robert H. Whaley*

17 ROBERT H. WHALEY
18 CHIEF UNITED STATES DISTRICT JUDGE
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